



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,026	09/13/2001	Fred Savrij-Droste	060953/0127	4998

22428 7590 12/21/2005

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,026

Applicant(s)

SAVRIJ-DROSTE ET AL.

Examiner

Sarah L. Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,7-22,24 and 26-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,7-22,24 and 26-34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1, 7-22, 24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brilman et al., WO 96/31406, in view of Dunn, WO 96/33618, for the reasons set forth in the previous Office Action. New claims 29-34 are also are rejected under 35 U.S.C. 103(a) as being unpatentable over Brilman in view of Dunn. Brilman discloses the container holding beer which is a beverage containing a dissolved gas (abstract). Dunn also discloses beverages containing dissolved gas and goes on to teach that the gas can be nitrous oxide and the beverage can contain milk (abstract). Dunn goes on to teach that nitrous oxide is in fact one of the preferred dissolved gas in milk beverages since it does not impart the sharpness of flavor to milk that carbon dioxide does (page 3, lines 5-10). As such, it would have been obvious to contain the beverages of Dunn in the container of Brilman in order to achieve a stiff foam on the beverage as disclosed by Brilman (page 2, lines 3-6).

Response to Arguments

Applicant's arguments filed August 3, 2005, have been fully considered but they are not persuasive.

Applicant argues that Brilman merely teaches the addition of a single, indissoluble gas to liquid and it would not have been obvious to add dissolvable gases, such as those disclosed in Dunn, to the liquid in Brilman. The Examiner respectfully disagrees. Brilman discloses the beverage being beer, which is known to contain carbon dioxide, which is a dissolved gas. Dunn discloses that nitrous oxide can be used in place of carbon dioxide in a beverage, as discussed in the rejection above. Therefore, it would be obvious, in view of the teachings of Dunn, to use a dissolved gas such as nitrous oxide in the beverage of Brilman.

Applicant also argues that Dunn does not teach or suggest entering an indissoluble gas, such as nitrogen, into a cartridge. However, Brilman is relied on for the teaching of this limitation.

Applicant argues that the references fail to teach a mixture of dissolvable gas and indissoluble gas, but Brilman discloses a container with a nitrogen cartridge that is used to hold beer, which is known to contain carbon dioxide, which is a dissolved gas and therefore, Brilman does supply such a teaching.

In regard to Applicant's arguments concerning the addition of the gases to the beverage, the Examiner is relying on the teachings of Brilman, not Dunn, to show these limitations. Brilman discloses a process of preparing a beverage container containing a consumable liquid wherein the liquid contains a dissolved gas and the container includes a cartridge that is filled with nitrogen. It is not seen why such a process would not also work with other beverages also containing dissolved gases, such as those taught by Dunn.

Applicant also argues that the claimed inventions provides unexpected results, but the affidavit under 37 CFR 1.132, filed August 3, 2005, is insufficient to overcome the rejection of claims 1, 7-22 and 24-28 based upon the combination of Brilman and Dunn as set forth in the last Office action because: It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716. While the claims do require a stiff foam, Brilman teaches such a limitation and the other properties discussed in the affidavit are not included in the claim language. Additionally, evidence that the prior art does not also provide for the foam as discussed in the affidavit has not been provided.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700